

Exhibit B

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 -----
5 SERTA SIMMONS BEDDING, LLC, et al.,
6 Debtors.

7 Chapter 11 Case No. 23-90020 (DRJ)

8 -----
9 SERTA SIMMONS BEDDING, LLC, INVESCO
10 SENIOR SECURED MANAGEMENT, INC., CREDIT
11 SUISSE ASSET MANAGEMENT, LLC, BOSTON
12 MANAGEMENT AND RESEARCH, EATON
13 VANCE MANAGEMENT, AND BARINGS LLC,
14 Plaintiffs,

15 -against-

16 AG CENTRE STREET PARTNERSHIP L.P., AG
17 CREDIT SOLUTIONS NON-ECI MASTER FUND,
18 L.P., AG SF MASTER (L), L.P., AG SUPER
19 FUND MASTER, L.P., SILVER OAK CAPITAL,
20 L.L.C., ASCRIBE III INVESTMENTS, LLC,
21 COLUMBIA CENT CLO 21 LIMITED, COLUMBIA
22 CENT CLO 27 LIMITED, COLUMBIA FLOATING
23 RATE INCOME FUND, A SERIES OF COLUMBIA
24 FUNDS SERIES TRUST II, COLUMBIA STRATEGIC
25 INCOME FUND, A SERIES OF COLUMBIA FUNDS
26 SERIES TRUST I, CONTRARIAN CAPITAL FUND I,
27 L.P., CONTRARIAN CENTRE STREET
28 PARTNERSHIP, L.P., CONTRARIAN DISTRESSED
29 DEBT FUND, L.P., GAMUT CAPITAL SSB, LLC,
30 LCM XXII LTD., LCM XXIII LTD., LCM XXIV
31 LTD., LCM XXV LTD., LCM 26 LTD., LCM 27
32 LTD., LCM 28 LTD., NORTH STAR DEBT
33 HOLDINGS, L.P., SHACKLETON 2013- III
34 CLO, LTD., SHACKLETON 2013-IV-R CLO, LTD.,
35 SHACKLETON 2014-V-R CLO, LTD., SHACKLETON
36 2015-VII-R CLO, LTD., SHACKLETON 2017-XI
37 CLO, LTD., Z CAPITAL CREDIT PARTNERS CLO
38 2018-1 LTD., AND Z CAPITAL CREDIT PARTNERS
39 CLO 2019-1 LTD.,

40 Defendants.

41 Adversary Proceeding No. 3-09001 (DRJ)
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May 8, 2023

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8:46 a.m.

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DEPOSITION of SARAH WARD,
held at the offices of PAUL, WEISS,
RIFKIND, WHARTON & GARRISON LLP, 1285
Avenue of the Americas, New York, New
York before Wayne Hock, a Notary Public
of the State of New York.

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A P P E A R A N C E S:

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1 A P P E A R A N C E S: (Continued)

2

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4 ROBBINS LLP

5 Attorneys for First Lien Lender
6 Defendants

7 Seven Times Square
8 New York, New York 10036

9

10 BY: ELIZABETH BIERUT, ESQ.
11 ebierut@fklaw.com

12

13 ALSO PRESENT:

14

15 THOMAS DEVINE, Videographer
16 CARLOS SARDINA
17 (via videoconference)
18 MIMRA ASLAOUI
19 (via videoconference)

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1 THE VIDEOGRAPHER: Good
2 morning. We're going on the record
3 at approximately 8:46 p.m. [sic] on
4 May 8, 2023.

5 Please note that the
6 microphones are sensitive and may
7 pick up whispering and private
8 conversations.

9 Please mute your phones at
10 this time.

11 Audio and video recording
12 will continue to take place, unless
13 all parties agree to go off the
14 record.

15 This is media unit one of the
16 video recorded deposition of Sarah
17 Ward in the matter of Serta Simmons
18 Bedding, LLC, et al., case number
19 23-90020, and Serta Simmons
20 Bedding, LLC V. AG Centre Street
21 Partnership, LP, et al., number
22 23-09001 (DRJ), both in the United
23 States Bankruptcy Court for the
24 Southern District of Texas Houston
25 Division.

1 This deposition is being held
2 at 1285 Sixth Avenue, New York, New
3 York.

4 My name is Tom Devine
5 representing Veritext New York, and
6 I am the videographer.

7 The court reporter is Wayne
8 Hock, also with Veritext New York.

9 I'm not authorized to
10 administer an oath, I'm not related
11 to any party in this action, nor am
12 I financially interested in the
13 outcome.

14 If there are any objections
15 to proceeding, please state them
16 now.

17 Appearances will be noted on
18 the stenographic record.

19 Will the court reporter
20 please in the swear, and then
21 counsel may proceed.

22 (CONTINUED ON NEXT PAGE)
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1 S A R A H W A R D, having
2 been first duly sworn by a
3 Notary Public of the State of
4 New York, upon being examined,
5 testified as follows:

6 EXAMINATION BY

7 MR. WILSON:

8 Q. Good morning, Ms. Ward.

9 A. Good morning.

10 Q. Have you ever been deposed
11 before?

12 A. No.

13 Q. I apologize, my voice is kind
14 of weird today, so hopefully you can
15 hear me even though I don't talk very
16 loudly.

17 A. The only -- I did a very
18 short deposition in a Reliant case. I
19 was a fact witness in December, 2021.

20 Q. You say a Reliant case.

21 A. Reliant was the name of the
22 company. It had to do with a leveraged
23 lease transaction.

24 Q. Who did you --

25 A. I was not party to the

1 transaction does not qualify as an open
2 market purchase?

3 MS. BIERUT: I object to form.

4 THE WITNESS: I have not been
5 retained to do that.

6 Q. If you believed that the
7 June, 2020 transaction clearly
8 qualified as an open market purchase
9 under the first lien credit agreement,
10 would your opinion change as to whether
11 the first lien lender defendants would
12 have reasonably expected Serta to
13 repurchase a substantial amount of
14 loans nonratably?

15 MS. BIERUT: I object to the
16 form.

17 THE WITNESS: It's
18 irrelevant.

19 Q. Why?

20 A. Because it doesn't matter
21 what my opinion is with respect to the
22 open market purchase transaction. I'm
23 here to give my opinion with respect to
24 market participants' expectations and
25 market practice.

1 market purchases, as I defined them,
2 the market participants would have
3 assumed the only other option to
4 repurchase loans was under the Dutch
5 auction exception.

6 Q. So is it fair to say that
7 paragraph forty-one should read, "while
8 Serta argues that the open market
9 purchase exception of pro rata sharing
10 justifies the transaction, market
11 participants would have reasonably
12 expected the Dutch auction exception"?

13 MS. BIERUT: Objection to
14 form.

15 THE WITNESS: I've caveated
16 my entire report as to the scope of
17 my retention. The scope of my
18 retention is to speak to market
19 practice, market practice and
20 understanding. Anything in this
21 report goes to market practice and
22 understanding.

23 Q. So even when you say in
24 definitive terms that the Dutch auction
25 exception was the only exception that

1 agreement and the limited exceptions
2 thereto matters to the outcome of the
3 litigation?

4 MS. BIERUT: Objection to
5 form.

6 THE WITNESS: I'm just
7 talking about market expectations
8 and understanding.

9 Q. Are you opining on whether
10 the June, 2020 Serta transaction
11 breached the implied covenant of good
12 faith and fair dealing?

13 A. That would be a legal
14 conclusion. That's not my assignment.

15 Q. So your answer's no?

16 A. Correct.

17 Q. Are you opining that there
18 were implied terms in the first lien
19 credit agreement that were actually not
20 written down by the parties?

21 A. I am just not giving any
22 legal opinion. My opinion is with
23 respect to market practice and
24 understanding, not with respect to
25 implied terms or not.

1 covenant of good faith and fair
2 dealing?

3 A. I'm aware.

4 Q. I know we covered this.

5 Just to be sure, you're not
6 opining on whether Serta or the lender
7 plaintiffs breached the implied
8 covenant of good faith and fair
9 dealing; correct?

10 MS. BIERUT: Objection to
11 form.

12 THE WITNESS: That's correct,
13 I'm not giving any legal opinions.

14 Q. And you're not offering any
15 opinion here on the scope of the
16 implied covenant of good faith and fair
17 dealing; correct?

18 MS. BIERUT: Objection to
19 form.

20 THE WITNESS: That's correct.

21 Q. And you're not offering an
22 opinion that anything that you're
23 testifying to would be relevant to
24 determining whether the transaction
25 breached the implied covenant of good

1 faith and fair dealing; correct?

2 MS. BIERUT: Objection to
3 form.

4 THE WITNESS: I'm opining as
5 to market practice and
6 understanding, that's what I'm
7 doing.

8 Q. Has a client ever asked you
9 to analyze whether a particular
10 transaction was permitted under a
11 credit agreement?

12 MS. BIERUT: Objection to the
13 extent it calls for privileged
14 information.

15 THE WITNESS: Yes.

16 Q. Had you did you go about
17 doing that analysis, at a high level?

18 MS. BIERUT: Objection to
19 form.

20 THE WITNESS: It really
21 depends on what the transaction is.

22 Q. Did you read the credit
23 agreement?

24 A. I likely read the credit
25 agreement many times.

1 anticipated would have been permitted
2 under the open market purchase
3 provision and what you think the open
4 market purchase provision permits?

5 MS. BIERUT: Objection to
6 form.

7 THE WITNESS: You know, my
8 opinion as to what the -- what
9 market participants would have
10 anticipated open market purchases
11 to permit is based on my
12 experience, my thirty-something
13 years doing finance transactions,
14 as well as all of the materials
15 that I've listed and all the
16 publications, industry publications
17 and materials that I've read over
18 the course of my career, as well as
19 the ones that I've listed as --
20 I've listed in the back of my
21 report in terms of materials
22 reviewed. So whether my opinion
23 differs from, I think it's not
24 really relevant, because I'm here
25 to really say what market

1 participants' expectations were
2 based on all of that that I just
3 went through.

4 Q. That's what also leads you to
5 your legal conclusion about what the
6 open market purchase provision in the
7 agreement legally permits; correct?

8 MS. BIERUT: Objection to
9 form.

10 THE WITNESS: I'm not here to
11 give my legal opinion.

12 Q. Okay.

13 A. I've not been retained to do
14 that.

15 Q. Have you ever advised clients
16 on the scope of the open market
17 purchase provision in credit
18 agreements?

19 A. Not directly, it has not come
20 up for me to have the occasion to
21 discuss it directly with a client.

22 Q. Are you aware of any clients
23 of yours ever using an open market
24 purchase provision in a credit
25 agreement to effectuate a transaction?

1 ruling on the motions for summary
2 judgment begins.

3 I'd ask you to turn to turn
4 to page one hundred thirty-four.

5 So starting at line twelve,
6 Judge Jones says, "in looking at the
7 words and given the common meaning and
8 then looking at the transaction that
9 engaged in, it is very clear to me that
10 the process that was engaged in fit
11 with 9.05(G). There's just no question
12 in my mind".

13 A. Uh-huh.

14 Q. Is your opinion that market
15 participants reasonably expected that
16 the June, 2020 Serta transaction was
17 impermissible contrary to Judge Jones'
18 ruling that "it is very clear to me
19 that the process was engaged in fit
20 within 9.05(G)"?

21 MS. BIERUT: Objection to
22 form.

23 THE WITNESS: I'm not here to
24 opine on the court's decision.

25 That would be a legal decision and

1 I'm not here to give any legal
2 decisions, as I've mentioned
3 numerous times today.

4 In terms of market
5 participants' expectations, I don't
6 -- my view is market participants
7 would not have expected that a
8 credit agreement with pro rata
9 sharing provisions and sacred
10 rights protection for those
11 provisions, they would not have
12 expected a debt-for-debt exchange
13 that subordinates their debt to the
14 debt of other lenders within the
15 same tranche would be permitted.

16 Q. So to the extent that Judge
17 Jones found that that was permitted
18 under the credit agreement, that's
19 contrary to your opinion of what market
20 participants would have expected?

21 MS. BIERUT: Objection to
22 form.

23 THE WITNESS: I've stated
24 what market participants would have
25 expected. I don't think I need to

1 go through it again.

2 Q. In paragraph thirty-four of
3 your report you say that one of the
4 earliest examples of a discriminatory
5 uptier transaction was the 2017 NYDJ
6 transaction.

7 Do you see that?

8 A. Yes.

9 Q. Are you aware of any earlier
10 uptier transactions?

11 MS. BIERUT: Objection to
12 form.

13 THE WITNESS: I can't think
14 of any.

15 Q. What prompted you to
16 reference NYDJ in this report?

17 A. It came up in a bunch of -- I
18 mean, number one it was -- it's been
19 written about quite a bit. And I think
20 it's an interesting transaction even
21 though there's differences in terms of
22 that credit agreement and the Serta
23 credit agreement because that credit
24 agreement permitted sacred rights to be
25 -- pro rata sharing provisions to be

1 respect to market participants'
2 expectations.

3 Q. Are you opining that either
4 Serta or the PTL lenders acted in bad
5 faith in entering into the June, 2020
6 transaction?

7 MS. BIERUT: Objection to the
8 form.

9 THE WITNESS: I have not been
10 retained to make any determinations
11 as to bad faith.

12 Q. So you're not opining as to
13 bad faith?

14 A. Correct. No, I'm not.

15 Q. Are you opining that Serta or
16 the PTL lenders acted with malice in
17 entering into the June, 2020 Serta
18 transaction?

19 MS. BIERUT: Objection.

20 THE WITNESS: No, I'm not.

21 Q. Are you opining as to whether
22 or not Serta or the PTL lenders'
23 actions were fraudulent in any way in
24 entering into the June, 2020
25 transaction?

1 MS. BIERUT: Objection.

2 THE WITNESS: No, I'm not.

3 That's beyond the scope of my role.

4 Q. Are you opining in any way
5 that the PTL lenders and Serta's
6 actions from malevolent with regard to
7 the June, 2020 transaction?

8 A. No.

9 MS. BIERUT: Objection to the
10 form.

11 MR. WILSON: That's all I
12 have.

13 Thank you very much.

14 THE WITNESS: Thank you.

15 4:28.

16 THE VIDEOGRAPHER: May I close
17 out the deposition for today?

18 MR. WILSON: You may.

19 (CONTINUED ON NEXT PAGE)

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VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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